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CONCORD N.H.

James J. Barry, Commissioner
Department of Public Welfare
State House Annex
Concord, New Hampshire

Dear Mr. Barry:

You have inquired whether you may consent to the marriage of a minor child under the age of consent who is in your custody where there is no parent or guardian in the state. It is my opinion that the answer to your question is no.

R.L., c. 338, ss. 6 et seq., set forth the manner by which a child under the age of consent may properly obtain a license to marry. Section 6 provides that if special cause exists rendering the marriage of such a minor desirable, the parties desiring to marry may apply in writing "with the parent or guardian having the custody of such party below such age, if there be such parent or guardian within the state" to the superior court or judge of probate. It would thus appear that the parent or guardian is required to join with the minor child only where the parent or guardian is within the state.

Thus in the case you refer to, the consent of the parent or guardian is not required by virtue of the statute, and as your custody does not substitute you as a parent or guardian within the state, your consent is not permissible or required.

In such a case hearing would still be held under section 7 and you could at that time have the department's views presented as to the desirability of granting the license and that would no doubt be tantamount to consent given or withheld in the first instance.

Very truly yours,

Richard G. Duncan
Assistant Attorney General

RCD/aml